IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
ORIGINAL JURISDICTION
Dated: Nainital the July 21, 2006
Criminal Bail Application No. 624 of 2006
Order on the bail application of accused

CRIMINAL SIDE

Brijesh Aswal @ Bijju S/o Sri Kundan Singh
R/o Vilalge Timila Tehsil Ranikhet
District Almora ….Applicant

Versus

State of Uttaranchal …Opposite Party

Arising out of Case Crime No. 446 of 2005
Under Section 302/24 I.P.C.
P.S. Ranikhet
District Almora

By the court

Hon'ble B.C. Kandpal, J.

The applicant has applied for bail in case crime No. 446 of 2005 under Section 302/34 I.P.C., P.S. Ranikhet, District Almora.

2. Heard Sri P.S. Adhikari, learned senior advocate assisted by Sri Arvind Vashisth and Sri B.S. Adhikari, learned counsel for the applicant, learned A.G.A. and perused the record.

3. The First Information Report reveals that the incident had taken place at 05:15 P.M. near K.M.O.U. Station /Taxi Station at Ranikhet. The accused/applicant has been assigned the role of firing a single shot at the deceased on account of which the deceased-Davendra succumbed to injuries.

4. The post mortem report shows that the deceased sustained a single gun shot injury at the right side of the neck and on account of this injury, subsequently he died. Post mortem report also shows that the injury sustained by the deceased is gun shot.

5. Sri P.S. Adhikari, learned senior counsel for the applicant has submitted before me that in this case the recovery of country made pistol is doubtful and the expert report also does not corroborate the prosecution case.

6. The contention of the learned counsel for the applicant is devoid of any force, as creating a doubt pertaining to the recovery of the country made pistol on the pointing out of the accused, will not affect the prosecution case at this stage, as it is a day light incident and the accused has been assigned the specific role. The brother of the deceased is an eyewitness and he lodged the First Information Report at the police station, which find corroboration by the medical evidence.

7. As far as the forensic expert report is concerned, the perusal of the same shows that the pellets recovered from the body of deceased might have been fired from the country made pistol recovered at the pointing out of the accused/applicant.

8. Learned counsel for the applicant has further argued that two so-called eyewitnesses have been examined by the police after a delay of one month and five days hence, on account this delay, the credibility of the eyewitnesses becomes doubtful.

9. I again do not find any force in this argument, as apart of these two eyewitnesses there is the evidence of an eyewitness who is the brother of the deceased and who was present at the place of the occurrence at the time of incident and his testimony finds corroboration with the medical evidence at this stage.

10. Keeping in view the aforesaid circumstances, I am of the view that it is not a fit case for bail at this stage.

11. Accordingly, the bail application is rejected.

(B.C. Kandpal, J.)

21.07.2006
ASWAL